

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

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| UNITED STATES OF AMERICA | . | Criminal No. 1:19cr334-3 |
| | . | |
| vs. | . | Alexandria, Virginia |
| | . | January 26, 2021 |
| XIZHI LI, JINGYUAN LI, | . | 9:33 a.m. |
| ERIC YONG WOO, JIAYU CHEN, | . | |
| and TAO LIU, | . | |
| | . | |
| Defendants. | . | |
| | . | |
| | . | |

TRANSCRIPT OF STATUS CONFERENCE
BEFORE THE HONORABLE LEONIE M. BRINKEMA
UNITED STATES DISTRICT JUDGE
(Via Teleconference)

APPEARANCES:

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|----------------------------|--|
| FOR THE GOVERNMENT: | DAVID A. PETERS, AUSA MARY K. DALY, SAUSA United States Attorney's Office 2100 Jamieson Avenue Alexandria, VA 22314 |
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(APPEARANCES CONTINUED ON PAGE 2)

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COMPUTERIZED TRANSCRIPTION OF STENOGRAPHIC NOTES

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1 P R O C E E D I N G S

2 (Defendants not present.)

3 THE COURT: All right, this is the matter of United
4 States of America v. Xizhi Li, et al., Criminal No. 19cr334.
5 Mr. Peters, are you there for the United States? Hello?

6 (No response.)

7 THE COURT: Hello? Hello?

8 MS. DALY: Judge?

9 THE COURT: What?

10 MS. DALY: Judge Brinkema, it's Mary Daly.

11 THE COURT: Wait. All right, we'll try this again.
12 This is the matter of United States of America v. Xizhi Li, et
13 al., Criminal No. 19cr334.

14 Who is on the line for the, for the government?

15 MR. PETERS: Good morning, Your Honor. This is David
16 Peters. I believe I'm also joined by Mary Daly for the United
17 States.

18 THE COURT: All right, good morning.

19 Mr. Kiyonaga, are you there for Mr. Xizhi Li?

20 (No response.)

21 THE COURT: Mr. Kiyonaga, are you there?

22 (No response.)

23 THE COURT: Hello?

24 All right, Mr. Burnham, are you there?

25 (No response.)

1 All right, Mr. Peters, are you still there?

2 MR. PETERS: Yes, Your Honor, I am.

3 THE COURT: Are any defense attorneys currently on
4 the line?

5 MR. GREENBERG: Good morning, Your Honor. Cary
6 Greenberg for Jiayu Chen.

7 THE COURT: All right, Mr. Greenberg.

8 MS. WONG: And Renee Wong for Jiayu Chen.

9 THE COURT: All right.

10 MR. BERK: And, Your Honor, Elon Berk for Jingyuan
11 Li.

12 THE COURT: I'm sorry --

13 MR. MULLIN: Patrick Mullin --

14 THE COURT: Wait, wait.

15 MR. MULLIN: I'm Patrick Mullin.

16 THE COURT: I'm sorry, who is here for Mr. Jingyuan
17 Li? Is that Mr. Burnham?

18 MR. PETERS: Your Honor, I believe -- this is David
19 Peters, Your Honor. I believe Mr. Burnham was released. He
20 has retained counsel who has local counsel, who I believe will
21 introduce themselves now.

22 THE COURT: All right.

23 MR. RAMSEUR: That's right, Your Honor. My name is
24 Doug Ramseur, local counsel here for Mr. Li, and Mr. Elon Berk
25 is also on the call for Mr. Li.

1 THE COURT: All right, great. All right.

2 MR. BERK: Yes, Your Honor.

3 THE COURT: All right. Now, who is here for Mr. Woo?
4 Mr. Mullin, are you there?

5 MR. MULLIN: Yes, I am, Your Honor.

6 THE COURT: Thank you.

7 For Mr. -- Mr. Simms, are you here for Mr. Liu?

8 MR. SIMMS: Yes. Good morning, Your Honor.

9 THE COURT: Very good. And now go back,
10 Mr. Kiyonaga, are you there?

11 (No response.)

12 THE COURT: Mr. Kiyonaga?

13 (No response.)

14 THE COURT: Mr. Peters, have you had any
15 communication with Mr. Kiyonaga?

16 MR. PETERS: Last week, I believe, Your Honor, when
17 we were discussing possible trial dates, but, but not since.

18 THE COURT: Have any defense counsel had any
19 communication with Mr. Kiyonaga?

20 MR. SIMMS: He sent an e-mail on --

21 THE COURT: Wait.

22 MR. SIMMS: -- Sunday evening.

23 THE COURT: Hold on a second. We need to -- stop.
24 I'm sorry, you have to say your name before you speak so my
25 court reporter can attribute the statement to the right person.

1 Who was speaking?

2 MR. SIMMS: I apologize. This is Jonathan Simms.

3 THE COURT: Yes, Mr. Simms.

4 MR. SIMMS: I had communication with Mr. Kiyonaga on
5 Sunday where he was just referencing that he was able to obtain
6 written consent from his client.

7 THE COURT: For waiving --

8 MR. GREENBERG: Your Honor, this is --

9 THE COURT: Go ahead.

10 MR. GREENBERG: Your Honor, this is Cary Greenberg.
11 I just wanted to talk to -- I did note, I think it was even
12 this morning he filed an ECF, again, assent with the waiver for
13 his client's appearance today.

14 THE COURT: All right. Well, I knew that he was
15 going to -- he had indicated he was going to waive his client's
16 appearance, and, of course, I issued an order yesterday. I
17 recognized that we would have a more perfect record if each
18 defendant were waiving.

19 I don't know if any of you had a chance to talk with
20 your clients about whether they were objecting to going forward
21 with a status hearing today without their actual presence.
22 Were any of you able to talk with your clients about that
23 situation?

24 Mr. Ramseur, were you able to talk with your client?

25 MR. RAMSEUR: Judge, I'll let Mr. Berk answer.

1 THE COURT: All right. Mr. Berk?

2 MR. BERK: Thank you, Your Honor. I did speak with
3 my client, and I explained the possibility that he would not be
4 brought out, and he understood and agreed to this hearing
5 today.

6 THE COURT: All right. Mr. Mullin, how about you?
7 Did you get a chance to communicate with Mr. Woo?

8 MR. MULLIN: I did not, Your Honor. I did not get a
9 chance to speak to him about this.

10 THE COURT: Are you objecting on his behalf to this
11 matter going forward without his being present?

12 MR. MULLIN: I am not.

13 THE COURT: All right. Mr. Greenberg, how about you?

14 MR. GREENBERG: Your Honor, I believe Ms. Wong spoke
15 to, to our client.

16 THE COURT: And did your client have any objection?

17 MS. WONG: Your Honor, this is Renee Wong. I spoke
18 to my client, who does not have any objection with this status
19 conference going forward without his appearance.

20 THE COURT: All right. And, Mr. Simms, how about
21 you?

22 MR. SIMMS: Your Honor, I spoke to him, and he has no
23 objection to this hearing going forward.

24 THE COURT: All right. Well, that's excellent.

25 Now, again, we all know that the COVID-19 virus

1 epidemic, which, of course, right now is very, very high in
2 Virginia, and the various general orders that Chief Judge Davis
3 has issued has greatly slowed things down. This case has
4 always qualified as a complex case for purposes of the Speedy
5 Trial Act because of the number of defendants, and initially
6 when Mr. Li, Mr. Kiyonaga's client, was first arrested, several
7 defendants were still not arrested, and the government had
8 requested various continuances. Mr. Woo was just arrested and
9 brought into the district within the last two weeks or so.

10 So we now have all but one defendant, and he is a
11 fugitive, and I don't believe it's expected that he will be --

12 MR. KIYONAGA: Hello.

13 THE COURT: Is that Mr. Kiyonaga?

14 MR. KIYONAGA: Hello.

15 THE COURT: Is that --

16 MR. KIYONAGA: Yes, yes. I'm sorry, I was on the
17 line, and I must have gotten disconnected. I've been on since
18 nine.

19 THE COURT: Okay. That's great, Mr. Kiyonaga. And
20 we've got the waiver from your client.

21 So I was just beginning to explain that, you know,
22 this case has been considered a complex case since the
23 beginning, but now we have all defendants on board. We're not
24 going to delay the case any further to await more arrests.

25 The problem we still face, however, is that with

1 COVID being what it is and the general orders of the Court, as
2 you know, all jury trials have been cancelled through the end
3 of February. If at the -- in March there are sufficient
4 indications that things are getting safer, I'm expecting we
5 will again be able to start up criminal jury trials.

6 The next issue is going to be, however, there are
7 multiple cases that have been in the hopper, that is, cases
8 that other judges have set for trial in December, January, and
9 February that are having to be, you know, had to be continued,
10 and, of course, in Mr. Woo's case, Mr. Mullin is brand new to
11 the case and has not had a chance to get discovery, which I
12 understand is still ongoing; that is, not all the discovery is
13 even in yet at this point.

14 So realistically, I think we all have to expect that
15 this case cannot be set for a trial in the near future. I'm --
16 I was hoping that all of you had had a chance to talk among
17 yourselves and to come up with a game plan for about when
18 defense counsel feel that you'll all be ready to try this case
19 and when the government feels that all discovery will have been
20 produced.

21 So, Mr. Peters, let me start with you. Is all
22 discovery in at this point, and if not, how much longer does
23 the government believe it needs to provide defense counsel with
24 everything they need to have and should have?

25 MR. PETERS: Your Honor, all discovery has not yet

1 been provided to defense counsel. We've been pushing it out as
2 fast as we can -- as we can get it processed here in the
3 office. I have another production that I'm preparing now, and
4 then I'll, I'll ask the defense counsel to send me their hard
5 drives so I can push it back out to them.

6 I -- right now, we have several iCloud accounts and
7 phones that are undergoing review as we speak. They're all --
8 most of the, the content, unfortunately, is in Cantonese or
9 Mandarin, so that does slow the process a bit, but I know that
10 the DEA has placed special priority on finishing these
11 productions. I hope to have those in office within the next
12 two months.

13 And if I could skip ahead just a little bit, Your
14 Honor, I have spoken to at least one counsel for each of the
15 various defense teams, and I think we're all in relative
16 agreement that August 23 would be the date we'd like to -- if
17 we're going to have a trial, the date we'd like to start. With
18 the five defendants that we have right now, I expect it would
19 be approximately a two-week trial. Obviously, if folks plead
20 guilty and we can pare down the witnesses, that would change.

21 THE COURT: Are all defense counsel in agreement that
22 a trial on October -- starting October 23 --

23 MR. PETERS: Your Honor, I'm sorry, August 23.

24 THE COURT: I'm sorry, August 23 works into your
25 schedule? Mr. Kiyonaga?

1 MR. KIYONAGA: Your Honor, this is, this is John
2 Kiyonaga for Mr. Li. I am free that week and logistically can
3 accommodate a trial. I think the Court remembers that I
4 objected to the delay of the trial back in June of last year.
5 I maintain that objection, but in terms of my schedule, I am
6 available then.

7 THE COURT: That's, that's fine.

8 MR. PETERS: Your Honor -- Your Honor, this is
9 Mr. Peters again. I would just note in lieu of -- in light of
10 Mr. Kiyonaga's objection, the Court still is pending
11 jurisdiction in this matter due to his interlocutory appeal.
12 Technically, I mean, the Court couldn't even hold the -- can't
13 even hold the trial until that's resolved.

14 THE COURT: Where is that -- what's the status of
15 that, Mr. Kiyonaga? Have you got a briefing schedule?

16 MR. KIYONAGA: I have not, Your Honor. Mr. Peters
17 has moved to dismiss. The Court has suspended the briefing
18 schedule and is considering his motion.

19 THE COURT: Okay. All right. Well, in any case, I
20 recognize down the road there may be a due process, so it's a
21 legitimate issue, and you can certainly raise it, but at this
22 point, I'm glad to hear that the 23rd works for you.

23 Mr. Ramseur or Mr. Berk, does -- that date works for
24 you as well?

25 MR. BERK: Yes, Your Honor. That's the date we

1 agreed on with the government.

2 THE COURT: All right. And who was speaking?

3 MR. RAMSEUR: Yes, Your Honor.

4 MR. BERK: Oh, Elon Berk, Your Honor. I apologize.

5 THE COURT: Mr. Berk, okay.

6 All right, Mr., Mr. Mullin for Mr. Woo?

7 MR. MULLIN: Yes, Judge, that date works for me.

8 THE COURT: All right. How about Mr. Greenberg?

9 MR. GREENBERG: Yes. Yes, Your Honor, that date
10 works for us.

11 THE COURT: And Mr. Simms?

12 MR. SIMMS: I'm available that date, Your Honor.

13 THE COURT: All right. I'm going to -- I'm going to
14 put on the calendar then for a potential two-week trial
15 starting Monday, August 23, at 10:00, with a jury. What I
16 think I'm going to do is we probably just for sake of making
17 sure things are in good shape will set a motions hearing date,
18 and realistically, those dates ought to be, you know,
19 sufficiently ahead of trial.

20 How about -- I mean, I think if there are going to be
21 any kinds of dispositive motions, they can be filed within the
22 next two or three months, after you've seen all this discovery.
23 Argument July 20? Does that work for you-all?

24 A VOICE: One moment, please, Your Honor.

25 THE COURT: Yeah, we're still doing --

1 MR. KIYONAGA: That works here, ma'am.

2 THE COURT: All right. That's --

3 MR. KIYONAGA: This is John Kiyonaga. The 20th of
4 July is fine.

5 THE COURT: All right. Mr. Berk, does that work for
6 you?

7 MR. BERK: Yes, Your Honor, it does.

8 THE COURT: All right. How about you, Mr. Mullin?

9 MR. MULLIN: It does, Judge.

10 THE COURT: All right. Mr. Greenberg?

11 MR. GREENBERG: Yes, ma'am.

12 THE COURT: And Mr. Simms?

13 MR. SIMMS: Yes, Your Honor.

14 THE COURT: All right. At this point, I am going to
15 assume we'll be doing all in-court proceedings again, so I'm
16 going to set those motions time for 9:00 on Tuesday the 20th.
17 If for some reason we are still in this virtual environment,
18 the VTC in Alexandria won't do anything before 10:00, so the
19 time might have to shift, but right now we'll set it for 9:00
20 for the argument of any motions.

21 Now, some motions we can resolve on the papers that
22 are submitted, but if we need argument or if I want argument,
23 it would be on that Tuesday, July 20, all right? Is there
24 anything else we need to address?

25 MR. PETERS: Your Honor, this is Mr. Peters. I just

1 wanted to clarify: You set that -- you set that hearing for
2 10:00 or 9:00?

3 THE COURT: It's for 9:00. It could shift to 10:00
4 if we have to do it by VTC.

5 MR. PETERS: Understood, Your Honor. Thank you.

6 THE COURT: All right. Is there anything else we
7 need to address while we're all together on the phone?

8 MR. PETERS: I don't believe anything from the
9 government, Your Honor.

10 THE COURT: All right. Mr. Kiyonaga, anything
11 further from you?

12 MR. KIYONAGA: No, ma'am.

13 THE COURT: All right. Mr. Berk?

14 MR. BERK: No, Your Honor.

15 THE COURT: Mr. Mullin?

16 MR. MULLIN: No, Judge.

17 THE COURT: Mr. Greenberg?

18 MR. GREENBERG: No, Your Honor.

19 THE COURT: Mr. Simms?

20 MR. SIMMS: No, Your Honor.

21 THE COURT: All right. Thank you, gentlemen, for
22 calling in. Stay safe, and we'll see you sometime in the
23 spring or summer, all right?

24 ALL COUNSEL: Thank you, Your Honor.

25 THE COURT: All right, bye-bye.

(Which were all the proceedings
had at this time.)

CERTIFICATE OF THE REPORTER

I certify that the foregoing is a correct transcript of
the record of proceedings in the above-entitled matter.

/s/

Anneliese J. Thomson